

# LEGISLATIVE AUDIT DIVISION

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## **MEMORANDUM**

**TO:** Legislative Audit Committee Members  
**FROM:** Angie Grove, Deputy Legislative Auditor  
**CC:** Jim Lynch, Director, Montana Department of Transportation  
James Currie, Deputy Director, Montana Department of Transportation  
Jodi Brandt, Chief Accountant, Montana Department of Transportation  
**DATE:** February 2008  
**RE:** Performance Audit Follow-up 07SP-024: Local Government Reimbursement for Joint Construction Costs (05P-05)  
**ATTACHMENT:** Original Performance Audit Summary

### **INTRODUCTION**

The performance audit report of Local Government Reimbursement for Joint Construction Costs was issued in January 2006. The objectives of the audit were to:

- ▶ Determine the impact of local governments failing to make timely reimbursement to the Montana Department of Transportation (MDT) for construction costs.
- ▶ Compare how other states manage their joint projects with local governments.
- ▶ Determine what recourse is available to MDT if local governments do not reimburse MDT in a timely manner.

Local governments frequently integrate local infrastructure construction projects with MDT sponsored construction projects. MDT traditionally funds these projects and receives reimbursement from local governments for their share of extra costs. In some cases, local governments are slow to reimburse MDT for these costs. The report includes three recommendations.

#### **Overview**

The Montana Department of Transportation (MDT) has implemented two of the three recommendations. MDT has partially implemented the third recommendation.

### **BACKGROUND**

MDT frequently enters into contracts with local governments, which include work for local governments at the same time MDT is conducting work on a state or federally funded highway. Local governments agree this process provides significant benefits to them. In the past, MDT pre-funded construction costs

for the entire project and then sought reimbursement from local governments for the local share of costs. During audit work, we determined there were instances where local governments did not reimburse MDT for these costs in a timely manner.

Our audit identified a number of issues associated with local government reimbursement delays to MDT.

- ▶ MDT lost interest revenue and the opportunity to use overdue funds to start other construction projects.
- ▶ There are no repercussions associated with a local government's untimely reimbursement to MDT for local construction costs.

### **FOLLOW-UP AUDIT FINDINGS**

Our audit made three recommendations to improve local government reimbursement to MDT for local construction costs. The following sections provide MDT's steps to implement each of the recommendations.

#### **Recommendation #1**

**We recommend Montana Department of Transportation:**

- A. Charge local governments interest on overdue accounts.**
- B. Withhold local disbursement of state collected transportation related funds when local governments fail to reimburse Montana Department of Transportation for construction costs within an established timeframe.**
- C. If necessary, seek statutory authority to implement actions A and B.**

#### **Implementation Status – Partially Implemented**

MDT has implemented Part A of the recommendation. Contracts between MDT and local governments now include language indicating MDT will impose a ten percent fee on all balances not paid within 30 days of billing. MDT legal staff will confirm the necessary contract language is included in all contracts during their internal review.

MDT has not implemented Parts B or C of the recommendation. MDT now requires local governments to pre-fund the local share of construction costs, including cost increases, before additional work is initiated. MDT believes these actions eliminate the need to withhold local distribution of state collected transportation funds (gas taxes). MDT's actions meet the purpose of this part of the recommendation. However, without establishing the procedures necessary to withhold gas taxes from local governments failing to meet financial obligations to the department, MDT's ability to recover locally generated costs, particularly when the final project costs are determined, remains unchanged.

MDT staff determined no legislation is necessary to implement either Part A or Part B of the recommendation. However, MDT has not established procedures to implement specific steps necessary to complete Part B of the recommendation. Therefore, it is unknown if legislation is required to implement all aspects of the recommendation.

#### **Recommendation #2**

**We recommend Montana Department of Transportation require local governments pre-fund a portion of their anticipated local construction costs prior to contract award.**

**Implementation Status - Implemented**

The recommendation has been implemented. MDT updated its standard contract language to require local governments pre-fund all anticipated construction costs not later than 30 days prior to contract letting. Local governments are also required to pre-fund all construction changes before initiating associated work. To minimize the impact of pre-funding local costs on projects with multiple phases and higher potential local costs, MDT allows local governments to develop a financial plan, approved by MDT, to cover all phases of the project. MDT also allows local governments to establish escrow accounts for pre-deposited construction costs.

**Recommendation #3**

**We recommend Montana Department of Transportation amend its contract language for joint project with local governments to:**

- A. Require monthly billing and reimbursement for local construction costs.**
- B. Address details that will be provided to local governments for all items identified as “miscellaneous” in monthly bills.**

**Implementation Status - Implemented**

Implementation of Part A of the recommendation is no longer applicable. Because MDT now requires local governments to pre-fund all local construction costs, it is no longer necessary to provide monthly billing and reimbursement for local construction costs. The department continues to provide local governments with regular statements related to construction costs and local funds remaining.

MDT has implemented part B of this recommendation. MDT reviewed its procedures related to providing additional detail to local governments identified as “miscellaneous” and has taken steps to provide the necessary documentation to validate these additional costs when needed.

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